

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MIROSLAVA LEWIS,

Plaintiff,

v.

VAIL RESORTS, INC., *et al.*,

Defendants.

CASE NO. 2:23-cv-00812-RSL

ORDER GRANTING IN PART  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT

This matter comes before the Court on “Defendants’ Motion for Summary Judgment.” Dkt. # 74. Plaintiff alleges that she was injured in January 2022 while working as a chairlift operator at Stevens Pass Resort and seeks to hold companies affiliated with her employer liable for those injuries.<sup>1</sup> Defendants seek summary dismissal of all of plaintiffs’ claims on the grounds that (1) workers’ compensation is the exclusive remedy for plaintiff’s injuries; (2) the Vail defendants owed no legal duty of care independent from plaintiff’s employer and/or did not cause plaintiff’s injuries; and (3) there is no evidence that could justify piercing the corporate veil.

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<sup>1</sup> Plaintiff was employed by VR NW Holdings, Inc., which does business as Stevens Pass Resort. Defendant Vail Holdings, Inc. (“VHI”) wholly owns VR NW Holdings, Inc. Defendant Vail Resorts, Inc. (“VRI”) wholly owns defendant VHI and defendant The Vail Corporation. VHI and VRI, the direct parent and grandparent of plaintiff’s employer, have no employees and operate solely through their subsidiaries, VR NW Holdings, Inc., and The Vail Corporation, respectively.

Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine issue of material fact that would preclude the entry of judgment as a matter of law. The party seeking summary dismissal of the case “bears the initial responsibility of informing the district court of the basis for its motion” (*Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)) and “citing to particular parts of materials in the record” that show the absence of a genuine issue of material fact (Fed. R. Civ. P. 56(c)). Once the moving party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails to designate “specific facts showing that there is a genuine issue for trial.” *Celotex Corp.*, 477 U.S. at 324. The Court will “view the evidence in the light most favorable to the nonmoving party . . . and draw all reasonable inferences in that party’s favor.” *Colony Cove Props., LLC v. City of Carson*, 888 F.3d 445, 450 (9th Cir. 2018). Although the Court must reserve for the trier of fact genuine issues regarding credibility, the weight of the evidence, and legitimate inferences, the “mere existence of a scintilla of evidence in support of the non-moving party’s position will be insufficient” to avoid judgment. *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1049 (9th Cir. 2014); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). Factual disputes whose resolution would not affect the outcome of the suit are irrelevant to the consideration of a motion for summary judgment. *S. Cal. Darts Ass’n v. Zaffina*, 762 F.3d 921, 925 (9th Cir. 2014). In other words, summary judgment should be granted where the nonmoving party fails to offer evidence from which a reasonable fact finder could return a verdict in its favor. *Singh v. Am. Honda Fin. Corp.*, 925 F.3d 1053, 1071 (9th Cir. 2019).

1 Having reviewed the memoranda, declarations, and exhibits submitted by the  
2 parties, including plaintiff's sur-reply,<sup>2</sup> and taking the evidence in the light most favorable  
3 to plaintiff, the Court finds as follows:  
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#### 5 BACKGROUND

6 This lawsuit was filed on May 31, 2023, against defendant Vail Resorts, Inc., and a  
7 number of Doe entities. Dkt. # 1. Vail Resorts filed a motion for summary judgment  
8 asserting that plaintiff's remedies were limited to those provided by Washington's  
9 workers' compensation system and that claims against affiliated companies were barred.  
10 Dkt. # 22. Plaintiff opposed dismissal and filed a motion to join as defendants Vail  
11 Holdings, Inc., and The Vail Corporation. Dkt. # 34 and # 40. The Court denied the motion  
12 for summary judgment and granted leave to amend. Dkt. # 47.  
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15 With regards to defendants' workers' compensation argument, the only new  
16 evidence submitted is the declaration of Matylda Spataro. Ms. Spataro, the Director of  
17 Insurance and Risk for The Vail Corporation, states that The Vail Corporation provides  
18 funding to the Washington State workers' compensation fund on behalf of VR NW  
19 Holdings, Inc. Dkt. # 75 at ¶ 3.  
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23 <sup>2</sup> The Court has not resolved defendants' untimely *Daubert* challenge to the report of plaintiff's expert,  
24 Richard Penniman. The local civil rules of this district require that *Daubert* motions to be filed by the  
25 dispositive motion deadline and be noted for consideration 28 calendar days later. There is no indication  
26 that defendants were in some way prevented from timely seeking to exclude Mr. Penniman's opinions.

This matter can be resolved on the papers submitted. Defendant's request for oral argument is therefore  
DENIED.

1 The details regarding how the various Vail entities interact and what they did or did  
2 not do in relation to the chairlift where plaintiff was injured are discussed below in the  
3 context of the duty and causation analysis.  
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## 5 DISCUSSION

### 6 A. Exclusivity of Workers Compensation

7 Defendants argue that plaintiff's claims are precluded because The Vail Corporation  
8 paid into the workers' compensation fund on behalf of VR NW Holdings, Inc., and the  
9 other two Vail entities are parents of VR NW Holdings, Inc. Under Washington's industrial  
10 insurance scheme, an employer is immune from civil lawsuits by its employees for non-  
11 intentional workplace injuries. *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154  
12 Wn.2d 16, 17–18 (2005); RCW 51.04.010; RCW 51.24.20. The Act provides, however,  
13 that “[i]f a third person, not in a worker’s same employ, is or may become liable to pay  
14 damages on account of a worker’s injury for which benefits and compensation are  
15 provided under this title, the injured worker or beneficiary may elect to seek damages from  
16 the third person.” RCW 51.24.030(1). “When compensable injury is the result of a third  
17 person’s tortious conduct, all statutes preserve a right of action against the tortfeasor, since  
18 the compensation system was not designed to extend immunity to strangers.” *Manor v.*  
19 *Nestle Food Co.*, 131 Wn.2d 439, 450 (1997) (quoting 2A ARTHUR LARSON,  
20 WORKMEN’S COMPENSATION LAW § 71.00, at 14–1 (1993)). In short, “immunity  
21 follows compensation responsibility” under the statutory scheme. *Id.* (quoting 2A  
22 ARTHUR LARSON, WORKMEN’S COMPENSATION LAW § 72.33, at 14-290.3).  
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1 Defendants do not assert that they were plaintiff's employer in January 2022.  
2 Rather, they argue that the purpose of the industrial insurance scheme will be  
3 circumvented if a worker is permitted to sue a parent company that was not involved in the  
4 negligent conduct at issue. Defendants' argument confounds two different legal issues. The  
5 first, discussed in this section, is whether defendants are entitled to immunity under the  
6 Industrial Insurance Act. If they are not, the second issue, discussed in the next sections, is  
7 whether they can be held liable for plaintiff's injuries under a negligence or veil piercing  
8 theory.  
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11 Affiliated corporate entities are, by law, separate legal entities and are not  
12 automatically lumped together under the label "employer" for purposes of workers'  
13 compensation. *McGill v. Auburn Adventist Academy*, 127 Wn. App. 1047, at \*7-8 (2005).  
14 A non-employer affiliated corporate entity can claim the employer's immunity from suit  
15 under the Industrial Insurance Act only where it is responsible for the compensation  
16 obligations imposed by the Act. *See Minton v. Ralston Purina Co.*, 146 Wn.2d 385, 393  
17 (2002) (holding that a parent in a self-insured family of corporations that had agreed to pay  
18 its subsidiary's compensation obligations was immune from suit); *Manor*, 131 Wn.2d at  
19 450, 453 (noting that a parent corporation that was obligated to (and did) pay its own funds  
20 as compensation for workplace injuries was immune from suit); *Jaimes v. NDTs Constr.,*  
21 *Inc.*, 194 Wn. App. 1020, at \*3 (2016) (finding that immunity flows from either the status  
22 of "employer" or compensation responsibility, not from corporate relationships or the  
23 payment of workers' compensation premiums).  
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1 Defendants have shown no more than that The Vail Corporation contributed in  
2 some unspecified way to Washington’s Industrial Insurance fund on behalf of VR NW  
3 Holdings, Inc. As discussed above and in the Court’s March 2024 Order denying  
4 defendants’ motion for summary judgment, simply paying into the workers’ compensation  
5 system through premiums or other forms of contribution does not make a corporate  
6 affiliate immune from employee lawsuits. There is no indication that the Vail family of  
7 corporations is self-insured for purposes of the Industrial Insurance Act or that any of the  
8 defendants had agreed to (or did) pay VR NW Holdings’ compensation obligations to  
9 plaintiff. To the contrary, Ms. Spataro’s declaration<sup>2</sup> suggests and defendants have  
10 admitted that VR NW Holdings is a participant in the state fund program and that plaintiff  
11 received compensation from the state fund, not from any of the named defendants.  
12 Defendants are not immune from suit under the Industrial Insurance Act.

## 16 **B. Negligence**

17 Defendants argue that, as parent or otherwise affiliated companies, they owe no  
18 duty to guests or employees at Stevens Pass Resort. “It is a general principle of corporate  
19 law deeply ‘ingrained in our economic and legal systems’ that a parent corporation (so-  
20 called because of control through ownership of another corporation’s stock) is not liable  
21 for the acts of its subsidiaries.” *Minton*, 146 Wn.2d at 398 (quoting *U.S. v. Bestfoods*, 524  
22 U.S. 51, 61 (1998)). A parent company can, however, “be held directly liable for its own  
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25 <sup>2</sup> The Court has taken Ms. Spataro’s declaration at face value for purposes of this motion for summary judgment but  
26 recognizes that her statements directly contradict defendants’ prior admission that VR NW Holdings pays the  
premiums for its workers compensation insurance. Dkt. # 82-30 at 3.

1 conduct when the parent company directly participates in the conduct, directs the conduct,  
2 or the alleged wrong can otherwise be traced to the actions of the parent company.”

3 *Hagstrom v. Safeway Inc.*, No. C20-1160 RAJ-TLF, 2020 WL 6826736, at \*3 (W.D.  
4 Wash. Nov. 20, 2020) (citing *Bestfoods*, 524 U.S. at 64-65).

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6 Defendant VRI acquired the Stevens Pass Resort in 2018. VRI is a holding  
7 company and acts solely through its subsidiaries, which include The Vail Corporation and  
8 VHI. VHI is also a holding company and acts solely through its subsidiary, VR NW  
9 Holdings. Plaintiff has made no effort to show that holding companies with no employees  
10 can act or fail to act in a way that could generate liability under a negligence theory.  
11 Because only The Vail Corporation has employees whose actions or inactions may have  
12 given rise to a duty and/or caused plaintiff’s injuries, only its potential liability is discussed  
13 in this section. If VHI and/or VRI can be held liable for the actions or inactions of their  
14 wholly-owned subsidiaries, it must be under the veil piercing analysis discussed in the next  
15 section.  
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18 In the context of this motion for summary judgment, the Court must determine  
19 whether plaintiff has come forward with sufficient evidence (1) to support the imposition  
20 of a duty owing from The Vail Corporation to VR NW Holdings employees and (2) to  
21 create a triable issue of fact regarding whether a breach of that duty caused plaintiffs’  
22 injuries. Plaintiff argues that The Vail Corporation had a duty to install safety netting on  
23 the light side of the Kehr’s Chair, to adopt procedures for employee downloading, and to  
24 enforce the safety policies, procedures, and guidelines it promulgated. Defendants cite to  
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1 evidence in the record suggesting that the failures that caused plaintiff's injury were the  
2 result of decisions made by local VR NW Holdings employees without any input,  
3 monetary contributions, or approvals from the Vail defendants. From this evidence,  
4 defendants argue they had no duty with regards to the safety of the Kehr's Chair or its  
5 operators.  
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7       Plaintiff, however, has come forward with evidence which, taken in the light most  
8 favorable to her, could support a finding that The Vail Corporation's own actions and  
9 inactions gave rise to the unsafe conditions at the Kehr's Chair in January 2022. In  
10 evaluating whether to purchase Stevens Pass Resort, The Vail Corporation commissioned a  
11 detailed engineering report regarding all of the lifts on the property. Dkt. # 82-2; Dkt. # 82-  
12 5 at 34. The report noted that the current operators had a plan to replace the Kehr's lift,  
13 pointed out that the lift had surpassed its design life, and recommended that the lift be  
14 replaced in 2017 (or at least by the end of 2019). Dkt. # 82-1; Dkt. # 82-2 at 7. The  
15 ultimate decision regarding whether and when to replace a chairlift at Stevens Pass Resort  
16 was made by The Vail Corporation, which controlled the allocation of capital. Dkt. # 82-5  
17 at 35. Despite indications that the Kehr's lift posed safety concerns, The Vail Corporation  
18 chose to replace the Brooks and Daisy chairlifts. Dkt. # 82-3; Dkt. # 82-8 at 10.  
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20       After the acquisition was complete and the daily operation of the Stevens Pass  
21 Resort was handed off to a Vail subsidiary, The Vail Corporation retained the power to  
22 inspect the Stevens Pass lifts and lift operations. Dkt. # 82-6 (scheduling time to observe  
23 and review Stevens Pass inspection procedures and records with the goal of evaluating  
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1 and/or validating its inspection and recordkeeping procedures); Dkt. # 82-6 and # 82-7  
2 (The Vail Corporation employees began evaluating the Stevens Pass lift inspection  
3 systems shortly after the acquisition in August 2018, with a focus on the Kehr's and  
4 Skyline lifts). It also retained the power to mandate changes to the lifts and lift operations  
5 when the inspections revealed something that was not to its liking. Dkt. # 82-8 at 10 (the  
6 Senior Director of Lift Maintenance for The Vail Corporation inspected all of the Stevens  
7 Pass lifts in 2019 and mandated recordkeeping changes and the replacement of the chairs  
8 on the Seventh Heaven lift).  
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11 In addition, The Vail Corporation retained direct supervisory control over health  
12 and safety at Stevens Pass Resort. In mid-2020, The Vail Corporation installed Frank  
13 Polizzi as Senior Manager of Health and Safety at Stevens Pass. Dkt. # 82-16 at 7. He  
14 reported directly to The Vale Corporation's Regional Director for Health and Safety rather  
15 than to the General Manager of Stevens Pass. Dkt. # 82-5 at 12; Dkt. # 82-16 at 8-10.  
16 Polizzi raised concerns regarding the safety of the Kehr's lift -- including the speed of the  
17 lift and the lack of fall protection -- with his Vail Corporation superiors during his first  
18 season as Senior Manager of Health and Safety. Dkt. # 82-16 at 13. Despite informing The  
19 Vale Corporation that the Kehr's lift situation required immediate correction, Polizzi was  
20 told by the Regional Director for Health and Safety that the condition of the lift was  
21 acceptable and met industry standards. Dkt. # 82-16 at 13-14. No changes were authorized  
22 or made.  
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1 The Vail Corporation also established mandatory operational and maintenance  
2 policies, practices, procedures, and guidelines for its family of ski resorts, including  
3 Stevens Pass. Dkt. # 82-5 at 17-18. As early as 2014, The Vail Corporation had in place  
4 fall protection procedures that required training for anyone who would be working 4 feet  
5 or more above the next level and specified that unprotected edges of a workspace (like the  
6 one from which plaintiff fell) must have a guardrail system, a safety net system, or  
7 personal fall protection equipment. Dkt. # 82-9. These requirements mirrored OSHA's fall  
8 protection standards. 29 C.F.R. § 1910.28(b)(1)(i). Through the evaluations and  
9 inspections discussed above, The Vail Corporation was aware that at least some of these  
10 requirements were not being met on the Kehr's Chair. The Vail Corporation also appears  
11 to have forwarded an operations manual to the Stevens Pass lift operators. Dkt. # 87-3. The  
12 Lift Operations Employee Manual addressed a wide range of topics, including detailed  
13 instructions on how to stop the lift and load guests for a trip down the mountain. Dkt. # 87-  
14 3 at 13-14. There were no instructions for downloading employees.

15 Finally, The Vail Corporation introduced a reporting system at Stevens Pass Resort  
16 that provided additional information regarding the dangers associated with moving chairs  
17 and lack of nets on the downhill (a/k/a light) side. In December 2020, an employee was  
18 knocked off the light side of the Seventh Heaven lift, falling approximately 10 feet to the  
19 ground below. Dkt. # 82-19 at 4 and # 82-20. There was no safety net on that side of the  
20 platform. Dkt. # 82-20 at 8. An incident report was sent to The Vail Corporation,  
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1 describing the incident as a “Near Miss”<sup>3</sup> and indicating that corrective measures should be  
2 given a high priority and completed within 1-3 days. Dkt. # 82-20 at 4-5. A lack of training  
3 and lack of chair path markers on the platform were identified as root causes and/or fixable  
4 problems. The proposed path markers were approved and completed a week later. Dkt.  
5 # 82-20 at 5.

7       The December 2020 accident triggered a conversation between and among various  
8 Stevens Pass employees and Vince Arthur, the Director of Mountain Operations Vail had  
9 hired for Stevens Pass in June 2020. Dkt. # 82-16 at 27 (discussing transitional period  
10 when new senior leadership from Vail was installed). The group agreed that a net needed  
11 to be installed on the light side of Kehr’s because a fall from there could be catastrophic.  
12 Dkt. # 82-21 at 2; Dkt. # 82-22 at 3. Scott Olsen, the Stevens Pass Lift Maintenance  
13 Manager at the time, recommended a capital project given that capital expenditures above  
14 \$1,000 had to go through an application and approval process established by The Vail  
15 Corporation. Dkt. # 82-5 at 40-43; Dkt. # 82-22 at 2. Unfortunately, the capital budget for  
16 2021 had already been approved, so the next opportunity to request funding would not  
17 arise until the fall of 2021 as the 2022 budget was compiled. While there is no indication  
18 that any Vail Corporation employees participated in this conversation, the risk of falls from  
19 unnetted platforms was clear from the December 2020 incident report, the fact that the  
20 proposed remedy did not include installation of a net was similarly documented, and the  
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26       <sup>3</sup> The employee apparently fell into snow, but landed between a piece of rebar sticking out of the ground and the cable drop. Dkt. # 82-21 at 4.

1 Stevens Pass personnel believed that a request for funding had to wait for approximately a  
2 year pursuant to the The Vail Corporation financial procedures and practices. Dkt. # 82-23  
3 at 34-35. Plaintiff fell from the lift platform in January 2022.  
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5 Washington defines negligence as “the failure to exercise ordinary care. It is the  
6 doing of some act that a reasonably careful person would not do under the same or similar  
7 circumstances or the failure to do some act that a reasonably careful person would have  
8 done under the same or similar circumstances.” 6 WASHINGTON PRACTICE:

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10 WASHINGTON PATTERN JURY INSTRUCTIONS: CIVIL 10.01 (Apr. 2022 Update).

11 Taking the evidence in the light most favorable to plaintiff, the Court finds that The Vail  
12 Corporation had inserted itself into the safety, lift operations, and budgeting protocols at  
13 Stevens Pass Resort to such an extent that it had a duty to take reasonable steps – or to  
14 order Stevens Pass Resort to take reasonable steps -- to address the risks associated with  
15 employee downloading on the Kehr’s chair. A reasonable jury could find that the breach of  
16 that duty, including the failure to install a net or to establish a procedure for employee  
17 downloading, caused plaintiff’s fall and injuries.  
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### 19 **C. Piercing the Corporate Veil**

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21 Plaintiff argues that the “Vail Defendants so dominated Stevens Pass that they were  
22 merely one in the same” and should be held liable as the alter egos of VR NW Holdings,  
23 Inc. Dkt. # 81 at 27. This argument conflates the three separate Vail entities. The Vail  
24 Corporation, as discussed above, may have acted or failed to act in an unreasonable  
25 manner with regards to employee safety at the Kehr’s Chair and faces potential liability for  
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1 plaintiff's injuries under a negligence theory. To the extent plaintiff is separately arguing  
2 that The Vail Corporation is her employer's alter ego, she relies almost entirely on the  
3 opinions of Richard Penniman, which state only that "Vail Corporate exerted authority and  
4 control over the hiring, budgeting, financing, messaging and public relations, operations,  
5 and safety policies and reporting of safety incidents and concerns." Dkt. # 82-24 at 13-15.<sup>4</sup>

7 In general, Washington law recognizes corporations as separate and distinct legal  
8 entities. In order to disregard the corporate form and hold the parent liable for the  
9 subsidiary's conduct and/or obligations, plaintiff must show that "the corporation has been  
10 intentionally used to violate or evade a duty owed to another." *Morgan v. Burks*, 93 Wn.2d  
11 580, 585 (1980). Plaintiff does not argue that The Vail Corporation or VR NW Holdings  
12 was set up to defraud her in particular or employees in general. Plaintiff was afforded the  
13 protections of Washington's workers' compensation system, and there is no indication that  
14 the corporate family structure in any way impeded plaintiff's ability to seek a remedy  
15 through that system. That workers' compensation is a limited remedy is not the fault of  
16 defendants or their corporate structure. Assuming for purposes of this motion that plaintiff  
17 has damages that exceed what was available through workers' compensation, neither harm  
18 nor the absence of an adequate remedy establishes corporate misconduct. "The purpose of  
19 a corporation is to limit liability. Unless we are willing to say fulfilling that purpose is  
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25 <sup>4</sup> Where Mr. Penniman's conclusions are unsupported (or affirmatively contradicted) by the record evidence, they  
26 have not been considered. The Lift Optimization Performance Playbook quoted at Dkt. # 82-24 at 15 does not, for  
example, say that stopping a lift for 3 minutes per hour would result in a 75% performance reduction. Nor can the  
Stevens Pass Lift Operations Manual, which directs that chairs should be stopped at the top of the unload ramp when  
downloading guests, be reasonably interpreted as preventing stoppages for employee downloading.

1 misconduct, [plaintiff] is hard put to argue a theory of corporate disregard.” *Meisel v. M &*  
2 *N Mod. Hydraulic Press Co.*, 97 Wn. 2d 403, 410-11 (1982).

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4 Although there is some confusion in the case law regarding the role of an alter ego  
5 theory in the veil piercing analysis, the Court will assume that the veil may be pierced if  
6 there is an “alter ego” finding even if the corporate form has not been intentionally used to  
7 defraud or evade a duty owed to plaintiff. To establish that The Vale Corporation is the  
8 alter ego of VR NW Holdings, plaintiff must show that “the corporate entity has been  
9 disregarded by the principals themselves so that there is such a unity of ownership and  
10 interest that the separateness of the corporation has ceased to exist.” *Columbia Asset*  
11 *Recovery Grp., LLC v. Kelly*, 177 Wn. App. 475, 486 (2013) (quoting *Grayson v. Nordic*  
12 *Constr. Co.*, 92 Wn.2d 548, 553 (1979)). No such showing has been made here. There is  
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14 no indication that the Vail entities have disregarded corporate formalities, are inadequately  
15 capitalized, have intermingled funds or assets, have overlapping ownership, officers, or  
16 directors, share offices or addresses, or have failed to appropriately memorialize their  
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18 dealings. While there is some degree of oversight and control that The Vail Corporation  
19 exercises over each of the Vail operating subsidiaries, including as VR NW Holdings, it is  
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21 not so extensive as to raise an inference that the separate corporations have ceased to exist.

22 With regards to VHI and VRI, plaintiff has not attempted to show that defendants  
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24 misused those corporate forms or that VHI or VRI are the alter ego of VR NW Holdings.

**CONCLUSION**

For all of the foregoing reasons, defendants' motion for summary judgment (Dkt. # 74) is GRANTED in part and DENIED in part. The claims against defendants Vail Resorts, Inc., and Vail Holdings, Inc., are DISMISSED. Plaintiff's negligence claim against The Vail Corporation may proceed, but she may not hold that entity liable under a veil piercing or alter ego theory.

Plaintiff's motion to strike and for leave to file a sur-reply (Dkt. # 88) is likewise GRANTED in part and DENIED in part. Defendants' untimely *Daubert* motion has not been considered, but the Court has considered Ms. Spataro's declaration regarding payments made to the workers' compensation fund and plaintiff's sur-reply.

Dated this 27<sup>th</sup> day of January, 2025.



Robert S. Lasnik  
United States District Judge